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12 RUBEN GARCIA, ADVANCED ENVIRONMENTAL GROUP, LLC, and
13 ADVANCED CLEANUP TECHNOLOGIES, INC.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PACIFIC MARITIME FREIGHT, INC.
d/b/a PACIFIC TUGBOAT SERVICE,

Plaintiff,

vs.

BARGE AMECS 1 (a/k/a "TIDEMAR")
(USCG No. 507460 IMO # 976) her
tackle, furnishings, equipment, fixtures,
and apparel, *In Rem*; and RUBEN
GARCIA, an Individual, ADVANCED
ENVIRONMENTAL GROUP, LLC, and
ADVANCED CLEANUP
TECHNOLOGIES, INC., *In Personam*,

Defendants.

Case No. 18-cv-09548-RGK-PJW

IN ADMIRALTY

REQUEST FOR IMMEDIATE
EXPEDITED HEARING ON
WEDNESDAY NOVEMBER 21, 2018
PURSUANT TO LOCAL RULE D.1
AND SUPPLEMENTAL RULE E(4)(f)
TO THE FEDERAL RULES OF
CIVIL PROCEDURE

PLEASE TAKE NOTICE THAT Defendants Ruben Garcia, Advanced
Environmental Group, LLC ("AEG"), and Advanced Cleanup Technologies, Inc.
("ACTI") (collectively "Defendants"), submit this request for an immediate expedited

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1 hearing pursuant to the Local Rules of the Central District of California, Supplemental
2 Rule D.1, and Federal Rules of Civil Procedure, Supplemental Rule E(4)(f), as follows:

3 1. The Local Rules of the Central District of California, Supplemental Rule
4 D.1 states, "In an action under Supplemental Rule D, a judicial officer may order that
5 the claim and answer be filed on a date earlier than twenty-one (21) days after arrest.
6 The order may also set a date for expedited hearing of the action." L.R. Supp. D.1.

7 2. Federal Rules of Civil Procedure, Supplemental Rule E(4)(f) states, in
8 relevant part, "*Procedure for Release From Arrest or Attachment*. Whenever property is
9 arrested or attached, any person claiming an interest in it shall be entitled to a prompt
10 hearing at which the plaintiff shall be required to show why the arrest or attachment
11 should not be vacated or other relief granted consistent with these rules. . . ."
12 Fed.R.Civ.P., Supp.R. E(4)(f).

13 3. Plaintiff Pacific Maritime Freight, Inc. d/b/a Pacific Tugboat Services
14 ("PTS") brings the present action under Supplemental Rule D of the Federal Rules of
15 Civil Procedure, Rules for Admiralty and Maritime Claims. Therefore, the matter is
16 eligible for hearing on an expedited basis under L.R. Supp. D.1.

17 4. On or about November 10, 2018, PTS arrested the *in rem* Defendant to this
18 litigation, BARGE AMECS 1 (a/k/a "TIDEMAR") (USCG No. 507460 IMO # 976) her
19 tackle, furnishings, equipment, fixtures, and apparel. PTS also effected the arrest of
20 certain equipment belonging to Defendants installed thereon, which renders this matter
21 eligible for a prompt hearing whereupon PTS must show why the arrest should not be
22 vacated. Fed.R.Civ.P., Supp.R. E(4)(f).

23 5. Good cause exists for an order setting a date for an immediate expedited
24 hearing, as set forth below, for November 21, 2018.

25 6. Defendants Own and Have Exclusive Possessory Interest in Certain
26 Equipment Affixed to a Barge that PTS Arrested. In or about November 2018, PTS
27 caused to be arrested the *in rem* Defendant to this lawsuit, BARGE AMECS 1 (a/k/a
28 "TIDEMAR") (USCG No. 507460 IMO # 976) her tackle, furnishings, equipment,

1 fixtures, and apparel. Defendants do not dispute PTS is the registered owner of BARGE
2 AMECS 1 (a/k/a "TIDEMAR") (USCG No. 507460 IMO # 976) ("Barge"). However,
3 PTS does not own certain equipment on the Barge. Garcia Decl., ¶ 3. Rather,
4 Defendants own certain proprietary emissions control technology ("AMECS"), which is
5 approved by the California Air Resources Board ("CARB") to capture and treat the
6 exhaust emissions from large oceangoing cargo vessels berthed in the Los Angeles and
7 Long Beach harbors. AMECS assists vessel owners to meet stringent emissions
8 requirements, the non-compliance of which results in costly fines to vessel owners.
9 Garcia Decl., ¶¶ 3,5. AMECS is not an appurtenance to the Barge, but is installed
10 thereon. Garcia Decl., ¶ 7. PTS improperly arrested AMECS. Garcia Decl., ¶¶ 3-17.
11 AMECS is currently valued in excess of \$10,000,000. Garcia Decl., ¶ 4.

12 7. Defendants Are Losing Substantial Income By Not Having Use of AMECS,
13 Which it Owns. AMECS earns Defendants substantial income by servicing vessels in
14 the Los Angeles and Long Beach harbors. Garcia Decl., ¶ 22. Services for use of
15 AMECS are in extremely high demand. *Id.* For each hour Defendants do not have
16 access to AMECS, Defendants are losing income. *Id.*

17 8. Defendants Paid Charter Hire For the Barge Through November 2018.
18 Defendants' payment of charter hire through November 2018 gives them current
19 possessory interest in the Barge. Garcia Decl., ¶¶ 13-14. PTS's arrest constitutes
20 wrongful deprivation. From March 2014 until the November 2018 arrest of the Barge,
21 Defendants used the Barge and AMECS to capture and treat exhaust emissions from
22 cargo vessels, as set forth above. Garcia Decl., ¶ 11. The Barge never left this Judicial
23 District during that period. Garcia Decl., ¶ 12. On or about October 30 2018, PTS
24 invoiced Defendants for charter hire of the Barge for November 2018, which Defendants
25 promptly paid via wire transfer to PTS. Garcia Decl., ¶¶ 13-14. PTS's arrest of the
26 Barge on or about November 10, 2018 wrongfully deprived Defendants of their
27 possessory interest in the Barge.
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7. PTS's Conduct Constitutes Unclean Hands. On or about November 7, 2018, PTS demanded Defendants/Counterclaimants remove AMECS from the Barge. Garcia Decl., ¶ 16. PTS knew or had reason to know that uninstalling and offloading AMECS would likely take more than a few days. Garcia Decl., ¶ 19. Less than one (1) week after PTS demanded removal of AMECS from the Barge, PTS caused the Barge to be arrested. Garcia Decl., ¶ 18. At the time of the arrest, PTS knew or had reason to know that Defendants/Counterclaimants had not had the opportunity uninstalled and offloaded AMECS from the Barge. Garcia Decl., ¶ 19. PTS is aware the Defendants/Counterclaimants were made to forfeit substantial business as a result of the arrest due to Defendants/Counterclaimants' inability to fulfil existing contracts to service cargo vessels with AMECS. PTS's conduct constitutes unclean hands. Garcia Decl., ¶ 21. Furthermore, it is believed PTS's improper arrest of AMECS was likely intended to (1) interfere with Defendants' existing and future customers to gain leverage over Defendants' market share, (2) force the sale of AMECS and purchase it at a reduced price, and/or (3) gain custody of AMECS to reverse engineer the proprietary technology to create a similar system for its own use and economic benefit. Garcia Decl., ¶ 25.

8. PTS Does Not Claim Security in AMECS for a Judgment. PTS is aware that AMECS is currently subject to two (2) UCC-1 finance statements. Garcia Decl., ¶ 32. Furthermore, PTS waived any such claim to security by not raising it in its pleadings in this litigation.

9. The Issues Set Forth in PTS's Complaint Are Subject to Pending Arbitration. The causes of action and relief sought in PTS's Complaint are subject to pending arbitration before the American Arbitration Association, and the issues set forth in PTS's Complaint are set to be heard on or about November 26, 2018. Baker Decl., ¶¶ 3-9.

10. The Matter is Ready to Be Heard Immediately. On November 19, 2018, Defendants submitted their Answer and Affirmative Defenses, and Claim for Interest in the Barge, rendering the matter ripe for immediate hearing. The undersigned will provide

1 notice by email to opposing counsel of its intent to seek an emergency immediate
2 expedited hearing.

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4 **WHEREFORE, DEFENDANTS REQUEST FROM THIS HONORABLE**
5 **COURT AN EXPEDITED HEARING, AS FOLLOWS:**

6 A. An order directing Defendants and PTS to appear for hearing before this
7 Court on Wednesday, November 21, 2018 or as soon thereafter as the Court is available
8 for hearing.

9 B. For an order directing PTS at the hearing to show cause why the arrest of the
10 Barge and/or AMECS should not be immediately vacated and released to Defendants.

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12 DATED: November 19, 2018

COX WOOTTON LERNER
GRIFFIN & HANSEN, LLP

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14 By: /s/ Neil S. Lerner

15 NEIL S. LERNER
16 THOMAS M. FEDELI
17 Attorneys for Defendants RUBEN
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19 ENVIRONMENTAL GROUP, LLC, and
20 ADVANCED CLEANUP
21 TECHNOLOGIES, INC.
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8 **VERIFICATION**

9 I, Ruben Garcia, declare:

10 I am the President and CEO of Advanced Environmental Group, LLC ("AEG"),
11 and Advanced Cleanup Technologies, Inc. ("ACTI"). I, along with AEG and ACTI,
12 are the Defendants and Counterclaimants in this litigation. I have read the foregoing
13 Request for Emergency Immediate Expedited Hearing and know the contents thereof.
14 The facts and allegations set forth therein are true and accurate based on my personal
15 knowledge, information and belief.

16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct.

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19 Dated: 11 - 18, 2018 at LOS ANGELES, California.

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